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C O N F I D E N T I A L SECTION 01 OF 02 MADRID 000081

SIPDIS

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SUBJECT: SPAIN: PROBLEMS USING USG-PROVIDED EVIDENCE IN
TERRORIST TRIALS

REF: A. MADRID 76

[B](#). MADRID 79

[C](#). 09 MADRID 505

[D](#). 06 MADRID 1914

[E](#). 06 MADRID 2657

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Classified By: DCM Arnold A. Chacon for reasons 1.4 (b) and (d)

[1](#)1. (C) SUMMARY: National Court Prosecutor Dolores "Lola" Delgado on January 13 vented to US DOJ officials on problems she is encountering in trying to introduce evidence provided by the USG - primarily from the US intelligence community - in her prosecution of radical Islamist terrorists. She delivered her remarks at a meeting of the US-Spain Counter-Terrorism and Organized Crime Experts Working Group, a prosecutor-to-prosecutor forum (Ref A). Delgado's comments stemmed chiefly from her experiences in the trials for terrorists arrested in Operations Chacal/Camaleon and Tigris (Refs B and C, respectively). Citing the legal term "fruit of the poisonous tree" to describe her predicament, she framed her frustration in terms of "Lessons Learned" and her desire to work more closely with the USG for a more successful prosecutions in the future. DOJ officials thanked Delgado for notifying them of her experiences, sympathized with Spanish efforts to strike the right balance between protecting sources and methods and the ability to forge a stronger case in court, and offered to serve as interlocutors in future instances in which Spanish prosecutors would like to use US intelligence-based information as evidence. Both delegations agreed that every trial is different and these issues will need to be resolved on a case-by-case basis. END SUMMARY.

[1](#)2. (C) Delgado emphasized that she would like the USG and GOS to ensure that the bilateral exchange of information in CT cases is done in a way in which the information provided is usable in a court of law rather than an exchange just for the sake of cooperation. She emphasized that the way in which the GOS receives information - through police, intelligence or other channels - is "vital" from a legal point of view. Delgado's boss, Chief Prosecutor Javier Zaragoza, supported Delgado's comments, reiterating that an appropriate system for the transfer of information has to be designed.

//Chacal/Camaleon//

¶3. (C) Delgado related how, in the trial of Chacal/Camaleon, she had tried unsuccessfully to submit a confession by Abu Omar Al Kurdi, whom she described as chief of suicide operations for Al Qaida in the Land of the Two Rivers. She related how - after Al Kurdi's capture by U.S. forces - Italy asked the USG to interrogate him regarding the truck bombing of the Italian military police headquarters in Nasiriyah, Iraq in November 2003. She detailed how the questioning took place via DVC attended by two prosecutors, a defender, a judge, an interpreter, and representatives of the Italian military police and the U.S. military. Delgado added that al Kurdi was informed of all his rights before the questioning began and before he volunteered any answers. Delgado had hoped to use Al Kurdi's statements as evidence, but the judges in the Tigris trial ruled that Al Kurdi's statements were inadmissible under international law because the questioning took place in U.S. facilities in Iraq that allegedly did not respect humanitarian law or even criminal common law. Delgado regretted that, in the Chacal/Camaleon case, what was acceptable in the Italian court system was "radically rejected" by Spain's. Nevertheless, Zaragoza asserted that the trouble introducing these bits of evidence "did not contaminate the rest of the (Chacal/Camaleon) sentence" and "did not nullify something positive."

//Tigris//

¶4. (C) Delgado's difficulties in using USG-provided evidence in the Tigris case are detailed in Ref C. Delgado on January 13 reviewed this case and praised the USG for being very agile in providing valuable realtime email evidence during

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the Tigris investigation. She suggested that the problem arose when Spanish prosecutors attempted to use the information as evidence. She called the verdict in the Tigris case "bittersweet" because while she was able to convict 4 of 12 defendants, the other eight were acquitted and the sentences could have been larger for those convicted if the evidence in question had been deemed admissible.

//Two Examples of Guantanamo-Based Evidence Being Ruled Inadmissible//

¶5. (C) Delgado also pointed out to the US delegation that there are even earlier examples - in which she was not the prosecutor - of the Spanish courts not accepting USG-affiliated information in a CT case. She recounted how the Supreme Court overturned the lower-court conviction of Hamed Abderrahaman Ahmed, known in the media as "the Spanish Taliban," by ruling in part that Spanish prosecutors could not use any evidence collected during their interview with Abderrahaman while he was being held at Guantanamo (GTMO) under conditions the Court termed "impossible to explain, much less justify." (Ref D). This ruling then led the National Court to drop charges shortly thereafter against Lahcen Ikassrien, a Moroccan national and former GTMO detainee. (Ref E)

//USG Recommendations to Spanish Prosecutors//

¶6. (C) Todd Hinnen, Deputy Assistant Attorney General (DAAG) for the National Security Division, offered three recommendations based on what the DOJ is advising U.S. prosecutors in similar situations: 1) engage with the USG as early as possible to decide what can be used in a trial; 2) in accordance with the Classified Information Protection Act, consider early on how to protect the intelligence even if it is used in trial; and 3) do not build your case around the assumption that you will be able to use the intelligence as evidence in the trial.

SOLOMONT